Office - Supreme Court, U.S.
FILED
AUG
JOHN T. FEY, Clerk

No. 20

In the Supreme Court of the United States

OCTOBER TERM, 1957

SCHAFFER TRANSPORTATION COMPANY AND AMERICAN TRUCKING ASSOCIATIONS, INC., APPELLANTS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA

BRIEF FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
VICTOR R. HANSEN,
Assistant Attorney General,
CHARLES H. WESTON,
Attorney,
Department of Justice, Washington 25, D. C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	4
Summary of argument	10
Argument: The Interstate Commerce Commission's rejection of Schaffer's application for authority to provide a motor service superior to the rail service which alone was available to shippers misinterpreted the statutory test of "public convenience and necessity", in that the Commission thereby denied to the public "inherent advantages" of a different mode of transportation, contrary to the mandates of the National Transportation Policy declared by Congress	13
Conclusion	23

CITATIONS

Cases:

Black Extension of Operations—Prefabricated Houses, 48 M. C. C. 695	21
Dixie Carriers, Inc. v. *United States*, 351 U. S. 56	18, 19
Interstate Commerce Commission v. *Inland Waterways Corp.*, 319 U. S. 671	22
Interstate Commerce Commission v. *Mechling*, 330 U. S. 567	18, 22
Johnson Common Carrier Application, 18 M. C. C. 194	21
Omaha & C. B. Ry. & Bridge Co. Common Carrier App., 52 M. C. C. 207	21
Pomprowitz Extension—Packing House Products, 51 M. C. C. 343	21
Wellspeak Common Carrier Application, 1 M. C. C. 712	21
Youngblood Extension of Operations—Canton, N. C., 8 M. C. C. 193	21

Statute:

Interstate Commerce Commission Act, as amended
National Transportation Policy, notes preceding 49 U. S. C. 1, 301, 901 2
Section 206 (a) (1), 49 U. S. C. 306 (a) (1)
Section 207 (a), 49 U. S. C. 307 (a)

Miscellaneous:

84 Cong. Rec. 9861, 9866
Oppenheim, *The National Transportation Policy and Inter-Carrier Competitive Rates* (1945)

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 20

SCHAFFER TRANSPORTATION COMPANY AND AMERICAN TRUCKING ASSOCIATIONS, INC., APPELLANTS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (R. 359–369) is reported in 139 F. Supp. 444.

JURISDICTION

Final judgment of a three-judge district court was entered on May 25, 1956 (R. 373). Notice of appeal was filed on July 19, 1956 (R. 370). Probable jurisdiction was noted on December 3, 1956 (R. 372). The jurisdiction of this Court is conferred by 28 U. S. C. 1253 and 2101 (b).

QUESTION PRESENTED

Whether the Interstate Commerce Commission, in rejecting Shaffer's application for authority to provide a motor service superior to the rail service which alone was available to shippers, misinterpreted the "public convenience and necessity" criterion of Section 207 (a) of the Interstate Commerce Act, in that it failed to administer that section (as required by the National Transportation Policy) so as to recognize and preserve the "inherent advantages" of the proposed motor transportation.

STATUTE INVOLVED

The declaration of national transportation policy, incorporated in the Interstate Commerce Act by the Transportation Act of 1940, 54 Stat. 899 (49 U. S. C., notes preceding Secs. 1, 301, 901); provides:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a na-

tional transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Part II of the Interstate Commerce Act, entitled "Motor Carriers", provides in part as follows:

SEC. 206. (a) (1) Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway * * *, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: * * *. [49 U. S. C. 306 (a) (1).]

* * * * *

SEC. 207. (a) Subject to section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: * * *. [49 U. S. C. 307 (a).]

STATEMENT

A. W. Schaffer, doing business as Schaffer Transportation Company (Schaffer), holds a certificate of public convenience and necessity authorizing him to transport granite over irregular routes as a common carrier by motor from Grant County, South Dakota, to points in 15 states, including Pennsylvania and New York (R. 290). He filed with the Interstate Commerce Commission an application for a certificate authorizing him to transport granite over irregular routes as a common carrier by motor (1) from Grant County to points in 10 additional states and the District of Columbia, and (2) from points in Vermont to a block of 16 states lying west of the Mississippi River and bounded on the west by Montana, Wyoming, Colorado, and Texas (R. 7; Appl. Exs. 4–5, R. 294–296). The Commission entered an order denying Schaffer's application and the district court dismissed his suit to have this order set aside (R. 38, 369–370).

The following are among the findings of fact made by the Commission.

At present, Schaffer is transporting granite for the Dakota Granite Company. This company has quarries in Grant County at which it finishes granite into monuments, mausoleums, and building forms, which it ships to retail outlets by rail (principally in less than carload quantities) and by truck. It ships by Schaffer's trucks two or three times a week and finds his service very satisfactory. The customers pay the freight charges and have the privilege of designating the carrier to be used. In most instances, they re-

quest shipment by motor, principally because truck rates are lower than l. c. l. (less-than-carload) rail rates, but also because truck shipments arrive "in shorter time and usually without being damaged." The company itself also prefers to use Schaffer's service, rather than rail, because "the cost of cartage to the rail siding (6½ miles distant) is eliminated, and the crating of the monuments need not be so thorough." The company has orders on file from customers in states to which Schaffer wishes to transport from Grant County, and all of these customers had requested delivery by motor. (R. 28–29.)

Schaffer is at present transporting one load a week from Grant County to New York and Pennsylvania points, and the trucks making these deliveries frequently return empty. If the requested authority to transport from Vermont is granted, Schaffer proposes to station a dispatcher and several pieces of equipment at Barre or Montpelier, Vermont, and perform a "shuttle" service between the South Dakota and Vermont origins. Vehicles which he uses in transporting shipments from Grant County to certain eastern destinations would be "deadheaded" to the Vermont origin area to pick up westbound traffic. Schaffer owns 14 tractor-trailer units, six of which he uses exclusively for moving granite. (R. 27–28.)

Schaffer's application for authority to transport from Grant County to additional destination areas was supported by the Grant County manufacturer whom he now serves (R. 28–29, 85–122). The part of his application relating to transportation from

Vermont to 16 western states was supported by six monument dealers (R. 29–32, 74–85, 135–177);[1] by two monument manufacturers in the Barre, Vermont, producing area who together ship annually 6,600,000 pounds into the 16 states involved (R. 32–35, 222–263); and by a trade association which has 67 Barre-area granite manufacturer members and which represents its members in traffic and shipping matters (R. 35, 122–135, 264–279).

With respect to the issues presented on this appeal, the only opposition witnesses were representatives of three railroads.[2] The railroad evidence showed the following:

Dakota Granite Company is located at a town on the line of the Chicago, Milwaukee, St. Paul & Pacific, and this railroad interchanges freight with lines serving southwestern points and lines serving the Barre area (R. 200–202). The Texas & New Orleans interchanges freight with lines serving both South Dakota and Vermont, and it offers a supplemental truck service in Texas and Louisiana (R. 203; Interv. Ex. 15, R. 318). The Central Vermont Railway has stations

[1] The supporting dealers were located in Illinois, Kansas, Minnesota, Missouri, Nebraska, and South Dakota (R. 29–32).

[2] Schaffer's application was opposed by a motor carrier holding a certificate authorizing transportation of granite from Grant County to four of the states and the District of Columbia embraced in the part of Schaffer's application relating to shipments from Grant County (R. 36, 179–199; Interv. Exs. 10–11, R. 307–311). But the order entered by Division 5 of the Commission denied Schaffer's application to the extent that it was thus opposed (R. 21–24), and Schaffer did not request reconsideration of the order of Division 5 (R. 25). This aspect of his application is therefore no longer in issue.

in the Barre area; shipments of granite from that area are substantial and regular and the road is able to handle additional traffic; through routes and rates are in effect over connecting lines to the 16 western states included in Schaffer's application; grant of this application would adversely affect the railroad; and there is motor carrier competition as to shipments of granite (R. 280–282).[3]

The Examiner who heard the evidence recommended that Schaffer's application be granted (R. 344–358). Division 5 found, with one Commissioner dissenting, that Schaffer is fit, willing, and able properly to perform the service proposed and that public convenience and necessity require this service, except for transportation from Grant County to the four eastern states and the District of Columbia served, or which might be served, by an existing motor carrier

[3] The testimony was merely that the railroad had motor carrier competition, without specifying to what destination areas there was such competition (R. 281). (For example, there was motor service to New York and Pennsylvania points, R. 233.) On cross-examination, the witness admitted that, to his knowledge, no motor carrier transported granite from Vermont to any of the 16 western states; that he did not know of a single pound of granite shipped to these states, lost by the railroad by reason of motor carrier competition; that he knew that one motor carrier transported to the Buffalo area and had learned, from reading the transcript of another proceeding, that this carrier interchanged freight to points in Illinois and Ohio (R. 283–285).

The District Supervisor of the Interstate Commerce Commission's Bureau of Motor Carriers advised the trade association of Vermont manufacturers that he was not aware of any through truck service to midwestern states (R. 272–273).